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So Ordered.



Frank L. Kurtz
Frank L. Kurtz
Bankruptcy Judge

Dated: August 26th, 2013

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

IN RE:

SNOKIST GROWERS,

Debtor.

Case No. 11-05868-FLK11

**FINDINGS OF FACT &
CONCLUSIONS OF LAW RE:
CHAPTER 11 PLAN OF
LIQUIDATION**

This matter came on for hearing on August 15, 2013 on Debtor's request for confirmation of the Debtor's Plan of Liquidation ("**Plan**") (Docket

**FINDINGS OF FACT &
CONCLUSIONS OF LAW**

-1-

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Yakima, Washington, 98901
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1 No. 1086). The Court has considered the Declaration of Jimmie Davis as well
2
3 as any testimony elicited at the confirmation hearing. Based upon the
4
5 evidence, the Court hereby finds and concludes as follows:

6 *I. Findings of Fact*
7

8 1. The Debtor gave proper notice of its Plan and the hearing on
9
10 confirmation of the Plan to creditors and parties in interest as required by
11
12 applicable provisions of Bankruptcy law and Bankruptcy rules.

13 2. There are three classes of impaired voting claims under the Plan –
14
15 Class 4 – Priority Wage Claims, Class 5 – Secured Claims, and Class 6 –
16
17 Unsecured Creditors. Class only class of claims which was impaired under
18
19 the Plan was Class 4 – Unsecured Creditors. Class 7 Claims of equity holders
20
21 are impaired but because no distributions will be made to such creditors under
22
23 the Plan, Class 7 is deemed to have rejected the Plan.

24 3. The Debtor has properly filed the Report of Balloting, indicating
25
26 the following results:

27 3.1 In Class 4, 139 claimants with claims totaling \$260,296.60
28
29 voted on the Plan. 98.18% in amount and 96.48% in number voted to accept
30
31 the Plan.
32

1 3.2 In Class 5, 1 claimant with a claim totaling \$5,073.43 voted
2
3 on the Plan. 100% in amount and 100% in number voted to accept the Plan.

4 3.3 In Class 6, 131 claimants with claims totaling
5
6 \$3,291,392.23 voted on the Plan. 98.11% in amount and 93.89% in number
7
8 voted to accept the Plan.

9
10 4. The Plan has been accepted in writing by the creditors and equity
11
12 security holders whose acceptance is required by law.

13 5. The Plan complies with all provisions of Title 11 of the United
14
15 States Code as well as other applicable law.

16
17 6. The Plan has been proposed in good faith and not by any means
18
19 forbidden by law.

20 7. All payments made or promised by the Debtor under the Plan for
21
22 services or for costs and expenses in, or in connection with, the Plan and
23
24 incident to the case, have been fully disclosed to the Court and are reasonable
25
26 and are hereby approved, or, if to be fixed after confirmation of the Plan, will
27
28 be subject to approval of the Court. No party is issuing securities or acquiring
29
30 property under the Plan.

1 8. After confirmation of the Plan, Jimmie Davis will serve as
2
3 Administrative Agent of the Debtor. Mr. Davis will receive compensation of
4
5 \$125/hour for his services.

6 9. The retention of Mr. Davis, pursuant to the terms of the Plan is in
7
8 the best interests of the Debtor, the Estate and creditors because Mr. Davis has
9
10 the knowledge and experience necessary to discharge the duties of
11
12 Administrative Agent under the Plan.

13 10. All objections to confirmation of the Debtor's plan have been
14
15 resolved.

16
17 11. With respect to Class 4, Class 5 and Class 6, each holder of a
18
19 claim in such classes has either: (a) accepted the Plan; or (b) will receive
20
21 greater distributions under the Plan than if the case were converted to a case
22
23 under chapter 7 of the Bankruptcy Code.

24 12. Classes 1, 2, 3 and 7 are unimpaired or not entitled to vote on the
25
26 Plan.

27
28 13. The Plan provides for the payment of all United States Trustee
29
30 fees payable under 28 U.S.C. §1930.

1 14. All payments to insiders during the course of the case have been
2 disclosed.
3

4 15. The Effective Date of the Plan is the day that is fourteen (14)
5 days after the date the order confirming the Plan is entered.
6
7

8 16. Substantial Consummation of the Plan will occur upon the
9 making of the Initial Distribution, which will occur no later than sixty (60)
10 days after the Effective Date.
11
12

13 *II. Conclusions of Law*
14

15 Based upon the foregoing findings of fact, the pleadings filed in this
16 case and the testimony provided at the confirmation hearing, the Court
17 concludes that:
18
19

20 A. The requirements for confirmation of the Plan imposed by the
21 Bankruptcy Code, Federal Rules of Bankruptcy Procedure and other
22 applicable law, including the requirements of 11 U.S.C. §1129 have been met.
23
24

25 B. The Plan should be confirmed.
26
27

28 C. To the extent that the above entered findings of fact are, in fact,
29 conclusions of law, such findings are hereby incorporated into these
30 conclusions of law and should be denominated as such.
31
32

1 D. The provisions of Chapter 11 have been complied with and the
2 Plan has been proposed in good faith and not by means forbidden by law.
3

4 E. Any and all payments for which Bankruptcy Court approval is
5 required, including authorization required by 11 U.S.C. §§327 and 330, shall
6 remain subject to Bankruptcy Court approval notwithstanding confirmation of
7 the Plan.
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11 F. The Debtor has disclosed the identity and affiliations of all parties
12 who are to serve as officers and directors under the Plan. The Debtor has
13 disclosed the identity of all insiders who will be paid a salary or consulting
14 fees under the Plan. The Debtor's disclosures satisfy the requirements of 11
15 U.S.C. §1129(a)(5).
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20 G. No governmental regulatory commission is required to approve
21 the Plan or the terms of the Plan.
22
23

24 H. The Debtor's Plan satisfies the requirements of 11 U.S.C.
25 §1129(a)(7) in that the only impaired classes (Classes 4 - 6) have accepted the
26 Plan. Each member in these impaired classes 4 will receive value, as of the
27 effective date of the plan, that is not less than the amount such claimant would
28 receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.
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1 I. Classes 4 – 6 are the only impaired classes under the Plan. All
2 other classes have either: (a) accepted the Plan; (b) are not impaired under the
3 Plan; or (c) are not entitled to vote on the Plan.
4

5
6 J. Administrative Claims described by 11 U.S.C. §503(b) and 11
7 U.S.C. §507(a)(2) are provided for as required by 11 U.S.C. §1129(a)(9).
8

9
10 K. The only classes of impaired claims have accepted the Plan and
11 the Plan therefore meets the requirements of 11 U.S.C. §1129(a)(10).
12

13 L. The Effective Date of the Plan will be the date that is fourteen
14 (14) days following entry of the order of confirmation.
15

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17 M. Substantial confirmation of the Plan will occur only upon making
18 the Initial Distribution to Class 6 creditors under the Plan.
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1 N. Creditors and parties in interest were given notice of the
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3 confirmation hearing and no objections thereto were made, or if made, have
4
5 been withdrawn, resolved or overruled.
6
7

8 / / / End of Order / / /
9

10
11 /s/ Roger W. Bailey
12 ROGER W. BAILEY (WSBA 26121)
13 Bailey & Busey PLLC
14 Counsel for Snokist

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**FINDINGS OF FACT &
CONCLUSIONS OF LAW**

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